

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Linden and Marion, Alabama)
MB Docket No. 03-162
RM-10723

NOTICE OF PROPOSED RULE MAKING

Adopted: July 9, 2003

Released: July 14, 2003

Comment Date: September 5, 2003

Reply Comment Date: September 22, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by Beckham Palmer, III, as Receiver ("Petitioner"), licensee of Station WNPT-FM, Channel 275C2, Linden, Alabama, proposing the reallocation of Channel 275C2 from Linden to Marion, Alabama, and the modification of Station WNPT-FM's license accordingly. Petitioner states its intention to apply for the channel, if allotted to Marion.

2. This proposal is filed pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. In support of its proposal, Petitioner states that the reallocation could provide Marion with its first local FM transmission service. Moreover, the reallocation would allow Station WNPT-FM to expand its service area.

3. Petitioner asserts that the adoption of its proposal will result in a preferential arrangement of allotments consistent with the Revision of FM Assignment Policies and Procedures by providing Marion (population 3,511) with its first local FM transmission service, without depriving Linden (population 2,424) of its sole local service. Since petitioner seeks to change its transmitter site, a gain and loss area study is required. However, the reallocation would not result in a move in or near an urbanized area, and a Tuck

1 See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

2 WJUS(AM) is currently licensed to Marion, but is authorized to operate with power of only 0.034 kilowatts during nighttime hours. Thus, Marion currently has no significant locally licensed nighttime service.

3 See 90 FCC 2d 88 (1982). The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters [co-equal weight is given to priorities (2) and (3)].

4 All population figures are taken from the 2000 U.S. Census.

5 Station WINL(FM) would remain licensed to Linden.

analysis is not necessary.⁶ We also request that petitioner demonstrate the public interest benefits derived by reallocating Channel 275C2 from Linden to Marion, Alabama.

4. We believe the proposal warrants consideration since the reallocation of Channel 275C3 at Marion, Alabama, would enable Station WNPT-FM to expand its service area, without depriving Linden of its sole local service. An engineering analysis has determined that Channel 275C2 can be reallocated to Marion in compliance with the Commission's minimum distance separation requirements with a site restriction of 9 kilometers (5.6 miles) northwest at petitioner's requested site.⁷ In compliance with the provisions of Section 1.420(i) of the Commission's Rules, we shall propose to modify the authorization of Station WNPT-FM without entertaining competing expressions of interest in the use of Channel 275C2 at Marion, Alabama.

5. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

	<u>Channel No.</u>	
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Linden, Alabama	253C1, 275C2	253C1
Marion, Alabama	---	275C2

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

7. Interested parties may file comments on or before September 5, 2003, and reply comments on or before September 22, 2003, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioner, as follows:

Mr. Beckham Palmer, III
2728 6th Street
Tuscaloosa, Alabama 35401

⁶ See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995). *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951) *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck* 3 FCC Rcd 5374 (1988).

⁷ The coordinates for Channel 275C2 at Marion are 32-41-00 North Latitude and 87-23-39 West Longitude.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do to apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁸

9. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

10. For further information concerning this proceeding, contact Sharon P. McDonald, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

⁸ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room

CY-A257), at its headquarters, 445 Twelfth Street, SW, Washington, D.C.